

imperial privy council. There is no doubt that the British North America Act constituted a pact along certain lines. The answer to the question whether the British North America Act is or is not a contract is given in five or six leading decisions; in certain respects the answer is in the affirmative and in other respects in the negative, and these answers are correlated.

The proposed resolution is a grave invasion of the rights of the provinces, and so far there has been no petition for legislation of this kind. In the case of other amendments from 1867 to 1930 there were petitions. The foundation of the act itself was a petition from the old provinces of Canada. The courts will restrain this parliament if it goes too far. It can go so far and no further because under section 91 it must legislate as a national parliament. The four old provinces in 1867 gave up their sovereign rights with respect to certain matters in order that confederation might be consummated. They turned over to this parliament jurisdiction with respect to those matters while they retained sovereignty in respect of matters of local interest. In those days there were no large cities in the dominion and it was never imagined that Canada would some day have a population of 10,000,000. At the time of confederation the provinces handed over their rights to the dominion in trust, because it was a trust; and that trust is twofold: One has reference to the rights of minorities as of 1863, which rights must be preserved, but not extended. What was then done is final. In my opinion this parliament cannot invade those rights. But there were other rights and privileges which the provinces handed over to the dominion of a business nature and these contained no contract. They were passed on forever to federal power.

Now this parliament has itself the power to accomplish the objects which under the present British North America Act the minister has in mind, and it does not need to go to the mother of parliaments for any amendments. Last year I attended the committee that studied the question of amendments to be made to the British North America Act, and the question was then considered, how amendments could be made to sections 91 and 92. The deputy minister of justice Mr. W. Stuart Edwards, appeared before that committee and gave a summary of leading cases. At page 2 of the committee's report, speaking with reference to the powers of the dominion parliament, he made this statement:

It will be observed that the purpose is to enable this parliament to deal effectively with urgent economic problems which are essentially national in their scope. Well, in my view, problems of that kind are now within the

competence of parliament under the British North America Act as it stands. A good deal has been said about the failure of the fathers of confederation to anticipate the necessity which might arise for the amendment of the constitution. Personally I do not think that they failed to anticipate such necessity; but I think they deliberately framed the constitution so as to make it subject to expansion by its own terms as the needs and as the problems of the country developed. In some of the self-governing dominions and in other countries where a federal system prevails, there are fixed provisions for the amendment of their constitution; but in most, if not all, of those countries, their constitutions are not similar to ours in this respect, that the residuary powers rest with the state, and not with the central authority as it does in Canada. Therefore I think that the fathers of confederation deliberately provided a scheme whereby all matters that are essentially national in their scope would be within the exclusive competence of parliament. They did that by vesting in the dominion parliament the residuary power, and in giving to the provinces their legislative powers they were very careful to make it clear that the legislative jurisdiction of the province was not, in any case, to extend beyond matters and rights situate in the province itself, matters of purely provincial or local concern.

There is a difference between a federation and a confederation, and by section 91 there are certain residuary powers retained by the federal power when not given the provinces in section 92. I contend, therefore, that there is no necessity for going to the mother of parliaments to have our constitution amended so as to give effect to the objects which the government has in view, for the reason that we now have all the powers we need for loan councils. Perhaps I should read one or two other paragraphs from the evidence given by Mr. Edwards:

By Hon. Mr. Veniot:

Q. In a consultation with the province in an amendment of the kind you refer to, do you need to have the consent of the province, or all the provinces?

A. Well, I wish to make it clear just before I answer that question; when I spoke a moment ago I meant that the protest is made by the provinces with regard to matters of provincial concern.

Q. By the provinces?

A. Yes. I would desire to negative any idea that any matter which relates to all the provinces, the mere fact that certain provinces object, would entitle them to have a voice at London or at Ottawa, wherever the constitution is being amended. That would be a matter of purely dominion concern which should be settled in this parliament; but where the amendment would affect what we would call actual provincial rights, and there is a body of provincial opinion opposing the amendment, I would say this parliament should consult the interested provinces.

Q. Provincial rights, common to the provinces as a whole?

A. Well yes. That is, common in the sense that each province has jurisdiction to deal with that matter in its own field.